

REMARKS

Favorable reconsideration is respectfully requested.

Upon entry of the above amendment, the claims will be 20 to 28.

The above amendment presents a new set of claims responsive to points set forth in the Official Action.

New powder composition claim 20 combines previous claims 10 and 16 and recites the feature that the powder is free of semi-crystalline polyester (basis is page 6, lines 23 to 25).

Polyester claims 21 to 25 depend on claim 20 and recite powder compositions containing the corresponding polyesters of previous claims 11 to 15.

Claim 16 is deleted.

New claims 26 to 28 replace previous claims 17 to 19 but are essentially unchanged but for dependencies.

The significance of the new claims will be discussed below.

Claims 10 to 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by Moens et al. (WO 98/18862, cited with equivalent U.S. 6,635,721).

This rejection is respectfully traversed.

NOVELTY

These claims are novel over Moens which only discloses powders that contain a mix of both amorphous and semi-crystalline polyesters. There are some comparative powders also incidentally disclosed in Moens that are formulated with amorphous polyester but these do not anticipate the enclosed claims. Powder Examples 27 and 28 use an amorphous polyester rich in TPA and low in IPA (Example 10) and powder Examples 31 and 32, though formulated with an IPA rich polyester (Example 1) use a TGIC cross-linker as opposed to the hydroxyalkylamide (HAA) cross-linkers used in the powders of present claims.

NON-OBVIOUSNESS

The claims are also non-obvious from Moens.

The present invention is concerned with problems caused by bubble formation when using HAA cross-linkers and the resultant need to improve the flexibility of coatings. Moens addresses a different issue of improving mechanical strength of weatherable powder coatings (see col. 2, lines 3 to 7). An art-skilled person desiring to improve coating flexibility would thus have no particular reason to consult Moens.

Even if an art-skilled person were to read Moens, this reference teaches directly away from using amorphous polyesters on their own (see col. 2 lines 9 to 35). Moens teaches that semi-crystalline polyesters must be used in a powder to overcome the stated disadvantages of amorphous polyesters. There is an active disincentive for a reader of Moens to use the amorphous polyesters disclosed therein (or any amorphous polyester) as the sole polyester component of a powder composition. The powders disclosed in Moens that do use amorphous polyester on its own (Examples 27, 28, 31 and 32) are comparative examples so a reader is actively discouraged from using such formulations without adding semi-crystalline polyester while such semi-crystalline polyesters are expressly excluded herein.

Accordingly, the rejection on prior art is untenable and should be withdrawn.

Claims 10 to 19 have been rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 11, 12, 13 and 17 of prior U.S. 6,635,721. This is a double patenting rejection.

This rejection is respectfully traversed in view of the above remarks explaining why the present claims are unobvious from those of U.S. 6,635,721.

Further, claims 10 to 19 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1 to 9 of copending application Serial No. 10/544,336.


In reply, there is submitted herewith a Terminal Disclaimer disclaiming the terminal portion of any patent maturing from the present application which extends beyond the expiration date of any patent maturing from applicants' copending application.

No further issues remaining, allowance of this application is respectfully requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact undersigned at the telephone number below.

Respectfully submitted,

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